

SENATE BILL 748

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2000 Regular Session  
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By: **Senator Forehand**

Introduced and read first time: February 4, 2000

Assigned to: Judicial Proceedings

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A BILL ENTITLED

1 AN ACT concerning

2 **Employment Discrimination - Genetic Testing and Genetic Information**

3 FOR the purpose of prohibiting an employer, employment agency, labor organization,  
4 or joint labor-management committee from discriminating against an employee  
5 or applicant for employment on the basis of the employee's genetic information  
6 or genetic characteristics; prohibiting an employer, employment agency, labor  
7 organization, or joint labor-management committee from requesting or  
8 requiring a genetic test of, or administering a genetic test to, an employee or  
9 applicant for employment; prohibiting an employer, employment agency, labor  
10 organization, or joint labor-management committee from seeking to obtain,  
11 obtaining, or using genetic information of an employee or applicant for  
12 employment; providing certain exceptions for the seeking, obtaining, or use of  
13 genetic information under certain circumstances; prohibiting the sale or  
14 interpretation for an employer, employment agency, labor organization, or  
15 labor-management committee of an employee's or applicant's genetic  
16 information or the results of a genetic test without the employee's or applicant's  
17 written permission under certain circumstances; defining certain terms; and  
18 generally relating to employment discrimination based on genetic information  
19 or genetic characteristics and to genetic testing in employment.

20 BY repealing and reenacting, with amendments,  
21 Article 49B - Human Relations Commission  
22 Section 15 and 16  
23 Annotated Code of Maryland  
24 (1998 Replacement Volume and 1999 Supplement)

25 BY adding to  
26 Article 49B - Human Relations Commission  
27 Section 16A  
28 Annotated Code of Maryland  
29 (1998 Replacement Volume and 1999 Supplement)

30 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF  
31 MARYLAND, That the Laws of Maryland read as follows:

1 **Article 49B - Human Relations Commission**

2 15.

3 For the purposes of this subtitle:

4 (a) The term "person" includes one or more individuals, labor unions,  
5 partnerships, associations, corporations, legal representatives, mutual companies,  
6 joint-stock companies, trusts, unincorporated organizations, trustees, trustees in  
7 bankruptcy, or receivers.

8 (b) The term "employer" means a person engaged in an industry or business  
9 who has fifteen or more employees for each working day in each of twenty or more  
10 calendar weeks in the current or preceding calendar year, and any agent of such a  
11 person; such term does include the State of Maryland to the extent as may be  
12 provided in this article but such term does not include a bona fide private  
13 membership club (other than a labor organization) which is exempt from taxation  
14 under § 501(c) of the Internal Revenue Code.

15 (c) The term "employment agency" means any person regularly undertaking  
16 with or without compensation to procure employees for an employer or to procure for  
17 employees opportunities to work for an employer and includes an agent or such a  
18 person; but shall not include an agency of the United States or an agency of the State  
19 of Maryland or political subdivision thereof, except such term shall include the United  
20 States Employment Service and the system of State and local employment services  
21 receiving federal assistance.

22 (d) The term "labor organization" means a labor organization engaged in an  
23 industry and any agent of such an organization, and includes any organization of any  
24 kind, any agency, or employee representation committee, group, association, or plan  
25 so engaged in which employees participate and which exists for the purpose, in whole  
26 or in part, of dealing with employers concerning grievances, labor disputes, wages,  
27 rates of pay, hours, or other terms or conditions of employment, and any conference,  
28 general committee, joint or system board, or joint council so engaged which is  
29 subordinate to a national or international labor organization.

30 (e) The term "employee" means an individual employed by an employer,  
31 except that "employee" does not include any person elected to public office or any  
32 person chosen by the officer to be on the officer's personnel staff, or an appointee in  
33 the policy making level or an immediate advisor with respect to the exercise of the  
34 constitutional or legal powers of the office. The exception set forth in the preceding  
35 sentence does not include employees subject to the State or local civil service laws.

36 (f) The term "religion" includes all aspects of religious observances and  
37 practice, as well as belief, except in those cases when the observance, practice, or  
38 belief cannot be reasonably accommodated by an employer without causing undue  
39 hardship on the conduct of the employer's business.

40 (g) The term "disability" means any physical disability, infirmity,  
41 malformation or disfigurement which is caused by bodily injury, birth defect or illness

1 including epilepsy, and which shall include, but not be limited to, any degree of  
2 paralysis, amputation, lack of physical coordination, blindness or visual impairment,  
3 deafness or hearing impairment, muteness or speech impediment or physical reliance  
4 on a seeing eye dog, wheelchair, or other remedial appliance or device; and any  
5 mental impairment or deficiency as, but not limited to, retardation or such other  
6 which may have necessitated remedial or special education and related services.

7 (H) "GENETIC CHARACTERISTIC" MEANS ANY GENE OR CHROMOSOME, OR  
8 ALTERATION OF A GENE OR CHROMOSOME, THAT IS SCIENTIFICALLY OR MEDICALLY  
9 BELIEVED TO CAUSE A DISEASE, DISORDER, OR SYNDROME, OR TO BE ASSOCIATED  
10 WITH A STATISTICALLY INCREASED RISK OF DEVELOPING A DISEASE, DISORDER, OR  
11 SYNDROME.

12 (I) (1) "GENETIC INFORMATION" MEANS INFORMATION:

13 (I) ABOUT CHROMOSOMES, GENES, GENE PRODUCTS, OR GENETIC  
14 CHARACTERISTICS THAT MAY DERIVE FROM AN INDIVIDUAL OR A FAMILY MEMBER;

15 (II) THAT IS OBTAINED THROUGH GENETIC TESTING:

16 1. FOR DIAGNOSTIC AND THERAPEUTIC PURPOSES; OR

17 2. FOR ANY OTHER PURPOSE, AT A TIME WHEN THE  
18 INDIVIDUAL TO WHOM THE INFORMATION RELATES IS ASYMPTOMATIC FOR ANY  
19 DISEASE RELATING TO THE GENETIC INFORMATION.

20 (2) "GENETIC INFORMATION" DOES NOT INCLUDE:

21 (I) ROUTINE PHYSICAL MEASUREMENTS;

22 (II) CHEMICAL, BLOOD, AND URINE ANALYSES THAT ARE WIDELY  
23 ACCEPTED AND IN USE IN CLINICAL PRACTICE;

24 (III) LEGALLY OBTAINED TESTS FOR THE USE OF CONTROLLED  
25 DANGEROUS SUBSTANCES; OR

26 (IV) LEGALLY OBTAINED TESTS FOR THE PRESENCE OF THE  
27 HUMAN IMMUNODEFICIENCY VIRUS.

28 (J) "GENETIC TEST" MEANS A LABORATORY TEST OF HUMAN CHROMOSOMES,  
29 GENES, GENE PRODUCTS, OR GENETIC CHARACTERISTICS THAT IS USED TO  
30 IDENTIFY THE PRESENCE OR ABSENCE OF INHERITED OR CONGENITAL  
31 ALTERATIONS IN GENETIC MATERIAL THAT ARE ASSOCIATED WITH DISEASE OR  
32 ILLNESS.

33 16.

34 (a) It shall be an unlawful employment practice for an employer:

35 (1) To fail or refuse to hire or to discharge any individual, or otherwise to  
36 discriminate against any individual with respect to his compensation, terms,

1 conditions, or privileges of employment, because of such individual's race, color,  
2 religion, sex, age, national origin, marital status, [or] disability, OR GENETIC  
3 INFORMATION OR GENETIC CHARACTERISTICS unrelated in nature and extent so as  
4 to reasonably preclude the performance of the employment; [or]

5           (2) To limit, segregate, or classify his employees or applicants for  
6 employment in any way which would deprive or tend to deprive any individual of  
7 employment opportunities or otherwise adversely affect his status as an employee,  
8 because of the individual's race, color, religion, sex, age, national origin, marital  
9 status, [or] disability, OR GENETIC INFORMATION OR GENETIC CHARACTERISTICS  
10 unrelated in nature and extent so as to reasonably preclude the performance of the  
11 employment;

12           (3) TO REQUEST OR REQUIRE A GENETIC TEST OF, OR ADMINISTER A  
13 GENETIC TEST TO, ANY EMPLOYEE OR APPLICANT FOR EMPLOYMENT AS A  
14 CONDITION OF EMPLOYMENT OR SEEK TO OBTAIN, OBTAIN, OR USE GENETIC  
15 INFORMATION OF AN EMPLOYEE OR APPLICANT FOR EMPLOYMENT.

16       (b) It shall be an unlawful employment practice for an employment agency to:  
17 (1) fail or refuse to refer for employment, or otherwise to discriminate against, any  
18 individual because of his race, color, religion, sex, age, national origin, marital status,  
19 [or] disability, OR GENETIC INFORMATION OR GENETIC CHARACTERISTICS  
20 unrelated in nature and extent so as to reasonably preclude the performance of the  
21 employment, or to classify or refer for employment any individual on the basis of his  
22 race, color, religion, sex, age, national origin, marital status, or disability unrelated in  
23 nature and extent so as to reasonably preclude the performance of the employment;  
24 OR (2) REQUEST OR REQUIRE A GENETIC TEST OF, OR ADMINISTER A GENETIC TEST  
25 TO, ANY EMPLOYEE OR APPLICANT FOR EMPLOYMENT AS A CONDITION OF  
26 REFERRAL FOR EMPLOYMENT OR SEEK TO OBTAIN, OBTAIN, OR USE GENETIC  
27 INFORMATION OF AN EMPLOYEE OR APPLICANT FOR EMPLOYMENT.

28       (c) It shall be an unlawful employment practice for a labor organization: (1) to  
29 exclude or to expel from its membership, or otherwise to discriminate against, any  
30 individual because of his race, color, religion, sex, age, national origin, marital status,  
31 [or] disability, OR GENETIC INFORMATION unrelated in nature and extent so as to  
32 reasonably preclude the performance of the employment; (2) to limit, segregate or  
33 classify its membership, or to classify or fail or refuse to refer for employment any  
34 individual, in any way which would deprive or tend to deprive any individual of  
35 employment opportunities, or would limit such employment opportunities or  
36 otherwise adversely affect his status as an employee or as an applicant for  
37 employment, because of such individual's race, color, religion, sex, age, national  
38 origin, marital status, [or] disability, OR GENETIC INFORMATION OR GENETIC  
39 CHARACTERISTICS unrelated in nature and extent so as to reasonably preclude the  
40 performance of the employment; [or] (3) to cause or attempt to cause an employer to  
41 discriminate against an individual in violation of this section; OR (4) REQUEST OR  
42 REQUIRE A GENETIC TEST OF, OR ADMINISTER A GENETIC TEST TO, ANY EMPLOYEE  
43 OR APPLICANT FOR EMPLOYMENT AS A CONDITION OF MEMBERSHIP OR REFERRAL  
44 FOR EMPLOYMENT OR SEEK TO OBTAIN, OBTAIN, OR USE GENETIC INFORMATION OF  
45 AN EMPLOYEE OR APPLICANT FOR EMPLOYMENT.

1 (d) It shall be an unlawful employment practice for any employer, labor  
2 organization, or joint labor-management committee controlling apprenticeship or  
3 other training or retraining, including on-the-job training programs to discriminate  
4 against any individual because of his race, color, religion, sex, age, national origin,  
5 marital status, [or] disability, OR GENETIC INFORMATION OR GENETIC  
6 CHARACTERISTICS unrelated in nature or extent so as to reasonably preclude the  
7 performance of the employment in admission to, or employment in, any program  
8 established to provide apprenticeship or other training.

9 (e) It is an unlawful employment practice for an employer, labor organization,  
10 or employment agency to print or cause to be printed or published any notice or  
11 advertisement relating to employment by the employer or membership in or any  
12 classification or referral for employment by the labor organization, or relating to any  
13 classification or referral for employment by the agency, indicating any preference,  
14 limitation, specification, or discrimination, based on race, color, religion, sex, age,  
15 national origin, OR GENETIC INFORMATION OR GENETIC CHARACTERISTICS, or on  
16 the basis of a disability. However, a notice or advertisement may indicate a  
17 preference, limitation, specification, or discrimination based on religion, sex, age,  
18 national origin or disability when religion, sex, age, national origin, GENETIC  
19 INFORMATION OR GENETIC CHARACTERISTICS, or disability is a bona fide  
20 occupational qualification for employment.

21 (f) It is an unlawful employment practice for an employer to discriminate  
22 against any of his employees or applicants for employment, for an employment agency  
23 to discriminate against any individual, or for a labor organization to discriminate  
24 against any member thereof or applicant for membership, because he has opposed  
25 any practice made an unlawful employment practice by this subtitle or because he  
26 has made a charge, testified, assisted, or participated in any manner in an  
27 investigation, proceeding, or hearing under this subtitle.

28 (g) Notwithstanding any other provision of this subtitle, (1) it is not an  
29 unlawful employment practice for an employer to hire and employ employees, for an  
30 employment agency to classify, or refer for employment any individual, for a labor  
31 organization to classify its membership or to classify or refer for employment any  
32 individual, or for an employer, labor organization or joint labor-management  
33 committee controlling apprenticeship or other training or retraining programs to  
34 admit or employ any individual in any such program, on the basis of his religion,  
35 national origin or disability in those instances where sex, age, religion, national origin  
36 or disability is a bona fide occupational qualification reasonably necessary to the  
37 normal operation of that particular business or enterprise; (2) it is not an unlawful  
38 employment practice for an employer to establish standards concerning an employee's  
39 dress and grooming if the standards are directly related to the nature of the  
40 employment of the employee; (3) it is not an unlawful employment practice for a  
41 school, college, university, or other educational institution or institution of learning to  
42 hire and employ employees of a particular religion if the school, college, university, or  
43 other educational institution or institution of learning is, in whole or in substantial  
44 part, owned, supported, controlled, or managed by a particular religion or by a  
45 particular religious corporation, association, or society or if the curriculum of the  
46 school, college, university, or other educational institution or institution of learning is

1 directed toward the propagation of a particular religion; [and] (4) it is not unlawful  
2 for an employer, employment agency or labor organization to observe the terms of a  
3 bona fide seniority system or any bona fide employee benefit plan such as a  
4 retirement, pension or insurance plan, which is not a subterfuge to evade the  
5 purposes of this subtitle; however, no employee benefit plan shall excuse the failure to  
6 hire any individual; AND (5) IT IS NOT AN UNLAWFUL EMPLOYMENT PRACTICE FOR  
7 AN EMPLOYER TO SEEK, OBTAIN, OR USE GENETIC INFORMATION WITH THE  
8 SPECIFIC WRITTEN AND INFORMED CONSENT OF AN EMPLOYEE OR APPLICANT FOR  
9 EMPLOYMENT TO: (I) DETERMINE THE EXISTENCE OF A BONA FIDE OCCUPATIONAL  
10 QUALIFICATION; (II) INVESTIGATE A WORKERS' COMPENSATION CLAIM; OR (III)  
11 DETERMINE AN EMPLOYEE'S SUSCEPTIBILITY OR LEVEL OF EXPOSURE TO  
12 POTENTIALLY TOXIC CHEMICALS OR POTENTIALLY TOXIC SUBSTANCES IN THE  
13 WORKPLACE, IF THE EMPLOYER DOES NOT TERMINATE THE EMPLOYEE OR TAKE  
14 ANY OTHER ACTION THAT ADVERSELY AFFECTS ANY TERM, CONDITION, OR  
15 PRIVILEGE OF THE EMPLOYEE'S EMPLOYMENT AS A RESULT OF THE GENETIC TEST.

16 (h) Nothing contained in this subtitle shall be interpreted to require any  
17 employer, employment agency, labor organization, or joint labor-management  
18 committee subject to this subtitle to grant preferential treatment to any individual or  
19 to any group because of the race, color, religion, sex, age, national origin [or]  
20 disability, OR GENETIC INFORMATION OR GENETIC CHARACTERISTICS of the  
21 individual or group on account of an imbalance which may exist with respect to the  
22 total number or percentage of persons of any race, color, religion, sex, age, national  
23 origin, GENETIC INFORMATION OR GENETIC CHARACTERISTICS, or persons with  
24 disabilities employed by any employer, referred or classified for employment by any  
25 employment agency or labor organization, admitted to membership or classified by  
26 any labor agency or labor organization, admitted to membership or classified by any  
27 labor organization, or admitted to, or employed in, any apprenticeship or other  
28 training program, in comparison with the total number or percentage of persons of  
29 such race, color, religion, sex, age, national origin, GENETIC INFORMATION OR  
30 GENETIC CHARACTERISTICS, or persons with disabilities in any community, State,  
31 section, or other area, or in the available work force in any community, State, section,  
32 or other area.

33 16A.

34 EXCEPT AS PERMITTED UNDER § 16(G)(5) OF THIS SUBTITLE, WITH THE  
35 WRITTEN PERMISSION OF THE EMPLOYEE OR APPLICANT FOR EMPLOYMENT, A  
36 PERSON MAY NOT SELL TO OR INTERPRET FOR AN EMPLOYER, EMPLOYMENT  
37 AGENCY, LABOR ORGANIZATION, OR JOINT LABOR-MANAGEMENT COMMITTEE ANY  
38 GENETIC INFORMATION OR RESULTS OF A GENETIC TEST OF AN EMPLOYEE OR  
39 APPLICANT FOR EMPLOYMENT.

40 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
41 October 1, 2000.